

**Submission
No 20**

INQUIRY INTO THE ADEQUACY OF YOUTH DIVERSIONARY PROGRAMS IN NSW

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About ACYP

The Advocate for Children and Young People (**ACYP**) is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. ACYP advocates for and promotes the safety, welfare, well-being and voice of all children and young people aged 0-24 years, with a focus on the needs of those who are vulnerable or disadvantaged.

Under the *Advocate for Children and Young People Act 2014*, our activities include:

- making recommendations to Parliament, and Government and non-Government agencies on legislation, policies, practices and services that affect children and young people;
- promoting children and young people's participation in activities and decision-making about issues that affect their lives;
- conducting research into children's issues and monitoring children's well-being;
- holding inquiries into important issues relating to children and young people;
- providing information to help children and young people; and
- preparing, in consultation with the Minister responsible for youth, a three-year, whole-of-government Strategic Plan for Children and Young People (**Plan**). The inaugural Plan was launched in July 2016.

Further information about ACYP's work can be found at: www.acyp.nsw.gov.au.

Introduction

ACYP welcomes the opportunity to comment on the adequacy of youth diversionary programs in New South Wales (**NSW**) to deter juvenile offenders from long-term involvement with the criminal justice system.

Both international human rights instruments¹ and NSW law² recognise that young people who commit offences should only be placed in detention as a last resort, and the evidence is clear that effective approaches to juvenile justice are firmly based on diversion.³

NSW has a number of crime prevention, diversion and reintegration measures in place at various levels. Many of these are captured in the Plan,⁴ which outlines the Government priorities and initiatives aligned with the themes identified as important by thousands of children and young people across the state. Under the themes of 'wellbeing' and 'opportunity', for example, the Plan lists the following Department of Justice initiatives:

¹ *United Nations Convention on the Rights of the Child* art 37(b).

² *Children (Criminal Proceedings) Act 1987* s 6; *Young Offenders Act 1997* s 7.

³ Noetic Solutions 2010. *Review of Effective Practice in Juvenile Justice*.

<http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Effective%20Practice%20Review%20FINAL.pdf>; Australian Institute of Criminology 2002. *What works in reducing young people's involvement in crime? Review of current literature on youth crime prevention*.

http://www.aic.gov.au/media_library/archive/publications-2000s/what-works-in-reducing-young-peoples-involvement-in-crime.pdf.

⁴ NSW Government 2016. *Strategic Plan for Children and Young People 2016-19*.

<https://www.acyp.nsw.gov.au/plan>.

- providing crime prevention and diversion programs and community services to help young people at risk;
- diverting young offenders from custody through a hierarchy of sanctions, including police warnings, cautions and Youth Justice Conferencing;
- expanding Youth on Track to three new areas to engage young people and their families in casework and services that are targeted at addressing their offending-related needs;
- funding Rural Residential Rehabilitation Services in Dubbo and Coffs Harbour to provide a comprehensive treatment program for 13-18 year old clients who have alcohol and drug related problems;
- assisting young people under Juvenile Justice supervision with services such as crisis accommodation, long term accommodation, family intervention, employer placement and support and casework support through the Joint Support Program; and
- providing a school in each Juvenile Justice Centre across NSW to enable young people to re-engage with learning and/or continue their educational pattern of study while in custody and plan for their transition from custody into the community.

Within the Plan, the Government also commits to reducing the percentage of Aboriginal young people in custody, which remains unacceptably high.

We acknowledge and welcome the Government's pledge to address the issue of Aboriginal overrepresentation, and commend the significant reduction in the overall number of children and young people being detained over the past several years. We also acknowledge and support recent efforts to enhance training, behaviour management practices and transitional support within detention centres. ACYP will be working this year with the Department of Justice and other agencies to report on further progress against the Plan's themes and indicators.

Since the launch of the Plan in July 2016, the Government has announced several new initiatives of relevance to this inquiry, including the introduction of 22 new caseworker positions in Juvenile Justice Centres⁵ and the funding of casework support for the Youth Koori Court.⁶ In addition, ACYP has held a number of targeted consultations with children and young people and provided their feedback to relevant Government departments. These include:

- **Juvenile Justice:** We are holding ongoing consultations with children and young people in Juvenile Justice Centres. Since July 2017, we have heard from approximately 80 young people detained at Reiby, Orana, Cobham and Frank Baxter about the supports needed before and after custody.
- **Homelessness:** We held consultations in October and November 2016 with 60 young people in Specialist Homelessness Services in urban and regional areas across NSW about their experiences of homelessness and their recommendations for improved service delivery.

⁵ NSW Department of Justice 2017. *Ministerial Media releases: Reducing Reoffending in Juvenile Justice*. <http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/reducing-reoffending-in-juvenile-justice.aspx>.

⁶ NSW Department of Justice 2017. *Ministerial Media releases: \$220,000 funding boost for Youth Koori Court*. [http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/\\$220000-funding-boost-for-Youth-Koori-Court.aspx](http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/$220000-funding-boost-for-Youth-Koori-Court.aspx)

ACYP then invited 40 children and young people from Specialist Homelessness Services in regional areas to our office in Sydney for Youth Week in April 2017 to hold further discussions about their needs.

- **Violence:** We held consultations in June 2017 with over 200 children and young people in seven schools across NSW about violence against children and young people and how to address it. ACYP then tested the responses arising from focus groups against an online poll of over 1,000 children and young people across the state.
- **Aboriginal Children and Young People:** Since 2015, we have consulted with over 1,000 Aboriginal children and young people on a variety of topics, including on what makes them feel welcome and unwelcome; what advice they would give to adults who want to consult with children and young people; what was and was not working in their communities; and what they would like us to know about learning at school.

The views of these children and young people have informed our response below about what is needed to enhance the NSW Government's existing efforts to prevent children and young people from engaging in crime, divert them from the criminal justice system and reintegrate them into the community. While we have not been able to canvass all of the relevant issues arising in our consultations, our overarching recommendations include:

- Reviewing disciplinary procedures in schools and introducing alternatives to suspension.
- Expanding the support services available to help children and young people with a broad range of needs (including learning, driver licensing, disability, mental health, substance use, violence and housing) especially in rural, regional and remote areas.
- Improving opportunities for the earlier identification of at-risk children and young people and their referral to appropriate and holistic support.
- Enhancing interagency collaboration and information-sharing to ensure that vulnerable children and young people are being supported with all of their needs.
- Training workers to promote the rights of children and young people to safety, health, education, information, culture, non-discrimination and a voice in matters that affect them.

Education

Education is a right of all children and young people⁷ and plays a vital role in their lives. Poor school attendance, disengagement and underperformance are associated with a range of adverse outcomes, including contact with the criminal justice system.⁸ Maintaining a connection with education is therefore a crucial component of efforts to prevent crime and divert young offenders from long-term involvement with the criminal justice system.

⁷ *United Nations Convention on the Rights of the Child* art 28; *Education Act 1990* s 4(a).

⁸ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW 2017. *2015 Young People in Custody Health Survey: Full Report*, 14.

<http://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>.

A majority of the young people we heard from in Juvenile Justice Centres reported that the schools within these centres were working well for them. They generally reported that having smaller class sizes and teachers who understood and supported their needs allowed them to achieve accomplishments that they had not previously thought possible—one young person told us that he had learned to read in custody at the age of 16.

Young people also spoke highly of the opportunities in detention to obtain a white card, gain certifications, complete Year 10 and engage in TAFE courses. They felt that they would perform better in mainstream schools if they could learn more flexibly, at their own pace and with more tailored support from teachers. Some young people also felt that there should be greater acknowledgement of students' different strengths and interests, and more of a focus on the transition to employment.

While the educational opportunities within the centres are generally working well, there is a high level of early school leaving among young people in Juvenile Justice Centres in NSW. The 2015 Young People in Custody Health Survey found that only 27 per cent of the young people who participated in the survey had been attending school in the six months prior to entering custody.⁹ Despite a minimum school leaving age of 17 years and a requirement that all students must complete Year 10,¹⁰ the median age of leaving school among participants was 15 years (14 years for Aboriginal and female young people) and over half of participants reported their highest level of educational attainment as Year 9 or below.¹¹

Many of the young people we consulted in Juvenile Justice Centres reported that they had been disengaged from school for several years and that this had contributed to their offending. There were a variety of reasons for their non-attendance. While some chose not to attend because they felt school was not engaging or not relevant to their interests or future careers, many others expressed the desire to go to school but felt that there were barriers to their participation.

Some young people said that they found school too difficult, and that they could not keep up with the lessons, which made them feel “stupid”. Many told us that their difficulties with learning or concentration had contributed to their behaviour issues in class, and most of the young people we spoke to reported receiving detentions, suspensions and expulsions. High rates of suspension and expulsion were also reported in the 2015 Young People in Custody Health Survey, which found that 94 per cent of participants had been suspended at least once (with 78 per cent suspended three or more times) and 56 per cent had been expelled (with 8 per cent expelled three or more times).¹²

Young people in nearly every Juvenile Justice Centre raised the issue of long suspensions (up to 20 days), and told us that it is often during a long suspension that they get into trouble with police, as they typically lack supervision and constructive activities during this time. Our discussions with these young people demonstrated that removing students from school as a form of discipline may have the unintended consequence of further entrenching problematic behaviour and causing them to become disconnected from their main source of pro social support. The results of the International Youth Development Study confirm that school suspension “is a key element of what is known as the

⁹ Ibid.

¹⁰ *Education Act 1990* s 21B.

¹¹ Ibid.

¹² Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 8, at 15.

‘school-to-prison pipeline’, which sees marginalised and excluded young people at an increased risk of juvenile and, eventually, adult incarceration”.¹³

Large periods of time away from school also cause young people to fall further behind, so that when they return to school, they are not able to follow along and end up misbehaving and being disciplined again. The young people we heard from told us that the cycle of back-to-back suspensions frequently repeats until a student is expelled or drops out. They have called for in-school alternatives to suspension to maintain their connection to education, as well as greater one-on-one support to address their learning needs.

Accordingly, ACYP recommends that the Department of Education review its suspension and expulsion policies and procedures¹⁴ with a view to reducing the maximum length of time for which a student can be suspended; introducing an in-school alternative to suspension; and linking behaviour management strategies with the provision of learning support. We also note that there is a new power to issue a non-attendance direction to a student who presents a health or safety risk to the school community.¹⁵ These directions will likewise need to be implemented in a way that supports young people to remain connected to school and other support structures.

ACYP supports the President of the Children’s Court, Judge Peter Johnstone, in his call for NSW to implement a program similar to Victoria’s Education Justice Initiative, which employs an Education Officer to attend the Children’s Court and receive referrals from Judicial Officers for children and young people who are not attending school.¹⁶ The Officer engages the children, young people and their families to explore why they are not attending and their options for returning to school, and advocates with schools and the Department of Education to resolve any barriers. We believe that this type of program would be particularly helpful for the young people we heard from who wanted to attend school, but had trouble getting accepted or re-admitted to local schools after coming into conflict with the law. It would likely also benefit children and young people in out of home care, who miss school at disproportionate rates due to behaviour management practices, changes in care placements, ill health and chronic disengagement.¹⁷

We note that the NSW Ombudsman recently conducted a review of behaviour management of students in NSW schools, following its earlier investigation into the Department of Education’s policy and procedure for long suspensions in 2007-8.¹⁸ As part of this review, it obtained school attendance and related data for children and young people in residential out of home care, which indicated that 43 per cent had missed 20 or more school days in 2016 for reasons other than illness, including

¹³ Hemphill S, Broderick D & Heerde J 2017. *Positive associations between school suspension and student problem behaviour: Recent Australian findings*, Trends & issues in crime and criminal justice no. 531, Australian Institute of Health and Welfare, 1. http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi531.pdf.

¹⁴ NSW Department of Education 2011. *Suspension and Expulsion of School Students Procedures*. https://education.nsw.gov.au/policy-library/associated-documents/suspol_07.pdf.

¹⁵ *Education Act 1990* s26HA.

¹⁶ Johnstone P 2017. *Early Intervention, Diversion and Rehabilitation from the Perspective of the Children’s Court of NSW*, 6th Annual Juvenile Justice Summit, 31. <https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence8may/Exh-337-068.pdf>.

¹⁷ Association of Children’s Welfare Agencies 2017. *Educational Engagement of Children and Young People in Out of Home Care in NSW: Preliminary Findings*, 5. http://www.acwa.asn.au/wp-content/uploads/2017/10/ACWA_Education_OOHC_Snapshot_Preliminary_Roundtable_For_Release.pdf.

¹⁸ NSW Ombudsman 2017. *Inquiry into behaviour management in schools: A Special Report to Parliament under s 31 of the Ombudsman Act 1974*, 2. https://www.ombo.nsw.gov.au/data/assets/pdf_file/0018/47241/NSW-Ombudsman-Inquiry-into-behaviour-management-in-schools.pdf.

suspension, expulsion and delayed enrolment.¹⁹ The Ombudsman recommended further work between the Departments of Family and Community Services and Education to ensure that children in out of home care are identified early and provided with appropriate support to meet their learning needs.²⁰

The need for greater support in school was raised consistently by young people in Juvenile Justice Centres. Specifically, they said that schools should be more aware of the different learning abilities and needs within the classroom and subsequent feelings of shame for students who have fallen behind their peers. The 2015 Young People in Custody Health Survey found that 79 per cent of participants were in the borderline range of intellectual ability and one in six were in the extremely low range, indicating a potential intellectual disability.²¹ Half of the participants' literacy test scores indicated severe reading difficulties.²² The young people we heard from suggested that if this diversity was better recognised, and teachers were better equipped to teach according to the learning style and ability of each student, students may be less likely to become disengaged from mainstream school and enter the juvenile justice system.

Consistent with our other consultations with children and young people across the state, the young people in detention called for greater opportunities in school to learn 'life skills' such as how to write a resume, find a job, manage finances and enter the rental housing market. We believe that this is particularly crucial for children and young people who transition to independent living at an early age, especially those who have experienced the breakdown of their family or care placement.

We emphasise the importance of recognising that problematic behaviour by children and young people is often symptomatic of their exposure to violence, abuse or trauma. As the 2015 Young People in Custody Health Survey found, 68 per cent of participants reported experiencing at least one form of childhood abuse or neglect, nearly half had been exposed to at least one traumatic event in their life, and of these, over three quarters had experienced at least one symptom of post traumatic stress disorder.²³ In our view, schools' engagement and disciplinary policies should focus on ensuring that any underlying issues contributing to problems at school are identified as early as possible and that students are connected with holistic support to prevent their further isolation.

Children and young people generally called for greater availability, understanding and support from school counsellors and other staff to help them address issues occurring outside of school, such as family violence or substance abuse. This came up very strongly in our consultations about homelessness and violence, with children and young people recommending compulsory education in schools the type of help that is available for students who are experiencing violence. As explored below, intervening early to protect children and young people from violence is key to preventing a number of poor outcomes, including long-term involvement with the criminal justice system.

Recommendations

- That the Department of Education review its suspension and expulsion policies and procedures with a view to reducing the maximum length of time for which a student can be suspended; introducing an in-school alternative to suspension; and linking behaviour management strategies with the provision of learning support.

¹⁹ Ibid at xi.

²⁰ Ibid.

²¹ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 8, at 80.

²² Ibid at 89.

²³ Ibid at 72-74.

- That the Department of Education and the Department of Justice consider implementing a program similar to Victoria’s Education Justice Initiative to facilitate re-entry to education for young people who are disengaged from school. Ideally, this type of program should extend to children and young people at any stage of juvenile justice intervention, from those engaged in Youth on Track, to those who have been cautioned or referred to a Youth Justice Conference, charged with an offence, or sentenced to community supervision or detention.
- That the Department of Education and the Department of Family and Community Services further collaborate to ensure that children and young people in out of home care are identified and connected with appropriate school-based support.
- That counselling, learning support, referral pathways and opportunities to learn life skills at school are strengthened for children and young people who have been or are at risk of becoming involved in the juvenile justice system.

Employment

In all of our consultations in Juvenile Justice Centres, young people have told us that what they want most when they leave custody is to get a job. The career interests of the young people we heard from included cooking, carpentry, construction, bricklaying, glazing and engineering. Many said that they wanted to work in order to support themselves and their families, as well as to have structure in their days and a constructive way to spend their time. They told us that not having a job or anything else to do was a significant contributor to their offending, and that access to employment would reduce the likelihood of reoffending.

The young people we heard from recommended targeted support to help those in conflict with the law to complete Year 10, obtain certifications, write resumes, practice interviewing, gain work experience and connect with potential employers. Some suggested that they should be able to engage in full time employment before completing Year 10.

ACYP suggests that opportunities to gain work experience and improve job readiness should be woven into all diversionary initiatives, from early intervention through to sentencing. We note that work development and community service orders can include engagement in personal development, educational or vocational programs.²⁴ We encourage Juvenile Justice NSW to build on these efforts and expand the prospects for children and young people receiving a juvenile justice intervention to obtain certifications, references and practical skills that they can take forward into employment.

We also note that having a criminal record can affect a young person’s ability to get a job or pursue a vocation.²⁵ While there are protections in place to limit the circumstances and time period in which a child’s criminal history can be disclosed,²⁶ it has been brought to our attention that there may be gaps or inconsistencies in the application of these protections. We therefore encourage an audit of the information disclosed through criminal records checks in relation to young offenders.

²⁴ *Children (Community Service Orders) Act 1987 s 3; Fines Act 1996 s 99A.*

²⁵ Australian Human Rights Commission. *Discrimination in Employment on the Basis of Criminal Record.* <https://www.humanrights.gov.au/human-rights-discrimination-employment-basis-criminal-record-0>.

²⁶ *Children (Criminal Proceedings) Act 1987 s 14; Criminal Records Act 1991 s 10; Young Offenders Act 1997 s 68.*

Recommendations

- That children and young people at all stages of Juvenile Justice intervention are connected with opportunities to obtain work experience, certifications and life skills training.
- That an audit is conducted of the juvenile outcomes disclosed through criminal records checks.

Transport

The children and young people we heard from in both Juvenile Justice Centres and Specialist Homelessness Services, especially those in rural or regional areas, emphasised that transport is a considerable challenge for them. They noted that many children and young people face significant barriers to getting a driver licence and cannot afford public transport fares, particularly in non-urban areas where there are fewer travel options and concessions. As a result, they may have limited access to employment opportunities, educational programs and health and support services. They may also be more likely to come into conflict with the law for unlicensed driving or fare evasion.

ACYP is aware that a number of initiatives exist to support young people to access their driver licence and support safer driving behaviours, including through schools, Juvenile Justice and Corrective Services, TAFE NSW, Police Citizens Youth Clubs, community-based programs, as well as private driving lessons. Some of these programs provide subsidies or other support to address cost-related and other barriers for disadvantaged young people; however, some barriers remain.

In our homelessness consultations, children and young people in regional NSW spoke about being kicked out of home late at night without any money and having to “hitch-hike”, “walk long distances in the dark” and “beg the bus driver for a free ride” to get to a friend or family member’s home or to crisis accommodation. They also discussed boarding trains and buses without paying the fare. In both Specialist Homelessness Services and Juvenile Justice Centres, young people talked about being fined for fare evasion or for sleeping on trains, buses and station platforms, and being arrested as a result of altercations with transit officers or police.

In order to prevent and divert young people from transport-related conflict with the law, it was suggested by children and young people that travel vouchers could be provided to those in need. It was recommended that vouchers be made available in shops or services with extended trading hours. Suggestions varied based on what was available in their area; examples included Woolworths, 7-Eleven or Police stations. Other young people felt that an Opal card that could be topped up remotely by homelessness services, caseworkers or the Bail Assistance Line would also be helpful.

ACYP suggests that transit officers who come across children and young people sleeping on buses, trains or platforms should avoid issuing them with fines and, where appropriate, implement the Protocol for Homeless People in Public Places.²⁷ We recommend more frequent use of warnings and cautions for children and young people who are found to be travelling without a valid ticket, and the waiver of outstanding transport fines for children and young people experiencing hardship. ACYP and the Youth Advisory Council have been advocating for the Government to work on ways to identify these children and young people within the system and clear their fines, and we strongly support these diversionary efforts.

²⁷ NSW Department of Family & Community Services 2013. *Protocol for Homeless People in Public Places*. http://www.housing.nsw.gov.au/_data/assets/pdf_file/0003/326046/ImplementationGuidelines.pdf.

In addition to issues with public transport, the children and young people we heard from discussed barriers to getting a driver licence. Access to a driver licence supports young people's pathway to independence and can provide a critical connection to education, employment, services, and recreational and social opportunities, particularly for young people in regional and rural areas that are poorly served by public transport. The inability to obtain a licence, or the suspension or cancellation of a licence, can contribute to and perpetuate disadvantage for young people with limited access to public transport. It can also lead to unlicensed driving, which may result in fines, further suspensions, arrests and imprisonment.²⁸ We welcome the recent driver licence disqualification reforms which reduce the penalties for unauthorised driving and provide an opportunity for certain disqualified drivers to apply to the Local Court to have their suspension lifted early,²⁹ and encourage targeted efforts to support disadvantaged young people to get and maintain a driver licence.

The children and young people we heard from in Specialist Homeless Services told us that the costs associated with learning how to drive and get a licence, including paying for lessons, were prohibitively expensive. For those living in rural areas, a lack of licence severely limits their ability to access work and education, especially on weekends or after hours. Young people told us that the costs of getting a licence and maintaining a car are a major barrier to employment, including being able to get to job interviews and to work sites. These concerns have also been highlighted in a recent report by the Brotherhood of St Laurence, which found that transport was identified as a reason for not being able to find work for 25 per cent of unemployed young people.³⁰

While many driver licensing programs are working well, some gaps remain in the driver licensing support system for young people. For example, the payment of 10 driving lessons for young people in out of home care is an important initiative to reduce barriers to accessing driving licensing for young people in care; however, these young people still need to obtain the remaining 90 hours required to meet the log book requirements. Some young people in care have also reported that the provision for driving lessons is written into their leaving care plan but they do not know how to access it. For young people to be eligible for a free place on the Safer Drivers Course, they need to have already completed 50 log book hours.

Young people in out of home care and experiencing homelessness have told us that access to a sufficiently licensed driver in order to log the required 120 hours of supervised driving, including a minimum of 20 hours of night driving, is a significant barrier to getting their licence. Another reported barrier is access to an adequately insured car. Difficulties are magnified for young people in residential care and Specialist Homelessness Services.

During our consultations with homeless young people, it was suggested that these services should be able to teach them how to drive as part of their case management plans. For example, if refugees were granted insurance concessions and could insure their cars for learner drivers, young people in refuges would have greater opportunities to gain their licence. Limited access to volunteer driver reimbursements for fuel and other expenses can also be a barrier to enabling community-based

²⁸ Cullen P, Clapham K, Hunter K, Treacy R & Ivers R 2016. Challenges to driver licensing participation for Aboriginal people in Australia: a systemic review of the literature. *International Journal for Equity in Health*, 15:134.

²⁹ NSW Department of Justice 2017. *Driver licence disqualification reforms*.

<http://www.justice.nsw.gov.au/Pages/Reforms/driver-licence-disqualification.aspx>.

³⁰ Brotherhood of St Laurence 2016. *U-Turn: The Transport Woes of Australia's Young Jobseekers*.

http://library.bsl.org.au/jspui/bitstream/1/9347/1/BSL_Uturn_transport_woes_of_young_jobseekers_2016.pdf.

organisations to provide volunteer supervision for young drivers. Young people have also reported that they may not have 100 points of identification or have difficulty in obtaining it, which can be a barrier to meeting the requirements to obtain a drivers licence.

A number of the barriers identified in our consultations with young people are also supported in the literature on driver licensing. For example, a review of challenges to driver licensing participation for Aboriginal people in NSW highlighted a number of barriers to getting and retaining a licence, including difficulty providing identity documents that meet the requirements of Roads and Maritime Services, inability to pay fees, difficulty reading and understanding written tests, lack of access to a registered and insured vehicle and a licensed supervising driver, and licence sanctions for unpaid fines³¹. This review also found that programs which provide end-to-end support to navigate through the licensing system and attain a driver licence have been found to have the most benefits for Aboriginal people.³² We note that the NSW Government has committed to increasing the number of Aboriginal young people getting and retaining a driver licence as part of the Plan, and we support the expansion of culturally appropriate and accessible programs.

Recommendations

- That driver licensing programs are resourced to provide comprehensive end-to-end support for vulnerable or disadvantaged children and young people, particularly those in rural and regional areas, to obtain their driver licences.
- That transit officers receive training on how to promote the best interests of children and young people who may be homeless or at risk of harm, including through implementation of the Protocol for Homeless People in Public Places.
- That transit officers and Police are encouraged to use warnings and cautions as an alternative to transport fines and criminal charges.
- That children and young people who are in out of home care or are involved with Specialist Homelessness Services are identified in the SDRO fines system for purposes of having their fines waived.
- That the Government consider developing a system for the distribution of pre-paid Opal cards or for remote top-up of Opal cards for children and young people who are experiencing or at risk of homelessness or violence.

Housing and Homelessness

The number of children and young people experiencing homelessness, as well as the availability and access to affordable housing, are significant issues for the NSW Government and children and young people. According to the 2015-2016 Specialist Homelessness Services report, 49 per cent of all

³¹ NSW Auditor-General 2013. *Performance Audit Report: Improving legal and safe driving among Aboriginal people.*

https://www.audit.nsw.gov.au/ArticleDocuments/294/01_Improving_Legal_Safe_Driving_Aboriginal_people_Full_Report.pdf.aspx?Embed=Y.

³² Ibid.

people accessing Specialist Homelessness Services in NSW were between 0-24 years.³³ The actual number of children and young people experiencing homelessness is likely to be much higher.³⁴

In recent years, the NSW Government has demonstrated significant commitment to reducing youth homelessness. This is evident by the increased allocation of funding to support the homelessness service system and the Premier's decision to include youth homelessness as one of twelve priority areas,³⁵ which has also been incorporated as an indicator in the Plan. The Department of Family and Community Services runs a number of initiatives to reduce homelessness among children and young people, including the Homeless Youth Assistance Program for children and young people aged 12 to 15 years and the Youth Private Rental Subsidy for young people aged 16 to 24 years.

Children and young people experiencing or at risk of homelessness encounter challenges across various life domains including education and learning, housing, employment, health and wellbeing and interpersonal relationships.³⁶ They are also more likely to be engaged with the out of home care and juvenile justice systems.³⁷ According to the 2015 Young People in Custody Health Survey, 13 per cent of participants reported having unstable accommodation or being homeless in the four weeks before entering custody.³⁸ This was more common among female detainees (21 per cent).³⁹ Of those who had previously been in detention, 11 per cent reported that they had difficulty finding accommodation within six months of their release.⁴⁰

Several of the young people we heard from in Juvenile Justice Centres told us that they had spent time living on the streets, usually after being kicked out of home. They suggested that young people transitioning out of custody should receive assistance to secure housing and live independently. Likewise, children and young people in Specialist Homelessness Services called for greater support for young people to enter and navigate the rental market.

In every homelessness consultation, children and young people reported needing support much earlier than they received it. They spoke about remaining in unsafe situations as a consequence of not knowing where to go for help or what services were available in their area. When services and supports are provided early, before a child or young person disengages from school, and before complete family breakdown occurs, there is enormous potential to positively change the trajectory of a young life.

It was also reported that the support system is complicated and children and young people are experiencing significant challenges in trying to navigate it. Children and young people discussed

³³ Australian Institute of Health and Welfare 2016. *Specialist homelessness services 2015-16*. <http://www.aihw.gov.au/homelessness/specialist-homelessness-services-2015-16/>.

³⁴ Australian Bureau of Statistics 2011. *2049.0 – Census of Population and Housing: Estimating homelessness*. <http://abs.gov.au/ausstats/abs@.nsf/Latestproducts/2049.0Main%20Features22011>.

³⁵ NSW Government. *Premier's Priorities*. <https://www.nsw.gov.au/improving-nsw/premiers-priorities/reducing-youth-homelessness/>.

³⁶ MacKenzie D, Flatau P, Steen A & Thielking M 2016. *The Cost of Youth Homelessness in Australia, Research Briefing*. [http://www.swinburne.edu.au/news/latest-news/2016/04/the-cost-of-youth-homelessness-in-australia- php](http://www.swinburne.edu.au/news/latest-news/2016/04/the-cost-of-youth-homelessness-in-australia-.php).

³⁷ Australian Institute of Health and Welfare 2012. *Children and young people at risk of social exclusion: links between homelessness, child protection and juvenile justice*. Data linkage series no. 13 Cat. no. CSI 13. Canberra: AIHW. <https://www.aihw.gov.au/reports/children-youth/children-and-young-people-at-risk-of-social-exclus/contents/table-of-contents>.

³⁸ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 8, at 16.

³⁹ Ibid.

⁴⁰ Ibid at 17.

needing concurrent supports across various domains (i.e. health, education, housing, employment, and financial), and the difficulties in obtaining the right support at the right time. They reported feeling frustrated when services penalised them for not turning up to appointments on time, which could have been a consequence of not having the means to travel to the appointment or not feeling physically or mentally well enough to travel to the office on the day.

In several of the consultations with children and young people experiencing homelessness, participants reported feeling worried and anxious about where they were going to go after their initial three months had expired in a youth refuge. Young people who were working towards their goals, had secured employment, and were making concerted efforts to get their lives back on track, spoke of feeling very concerned about facing another perilous and uncertain housing situation.

The issue of youth homelessness has flow on effects for the juvenile justice system, particularly in relation to bail decisions.⁴¹ Under section 28 of the *Bail Act 2013*, a court may impose an accommodation requirement on a child or young person when granting them bail. When accommodation cannot be arranged, they are held in custody.⁴² While it is essential to ensure that young people who are accused of criminal offences are not released into homelessness, it is equally vital to prevent them from being refused bail due to gaps in care and protection or housing assistance. It is also important to prevent them from being arrested and taken into custody for bail condition breaches related to unstable accommodation.

According to the most recent NSW Custody Statistics Quarterly Update, 166 of the 288 young people in detention as of September 2017 (58 per cent) were on remand.⁴³ Of these young people, 43 per cent were Indigenous.⁴⁴ Young people with complex needs—such as mental health issues, substance abuse problems or a history of victimisation or violence—are more vulnerable to receiving custodial remand, as they are less likely to be accepted into youth refuges or the homes of parents or carers.⁴⁵

Most young people who are remanded into custody do not receive a sentence of detention⁴⁶ and their average length of stay in detention is around 12 days (18 days for Indigenous males).⁴⁷ Detention in these circumstances can be counterproductive as it does not typically afford the young person with a meaningful opportunity for rehabilitation, yet has the potential to cause substantial disruption to their work, school or family responsibilities and their connection to social support structures.⁴⁸ We are therefore of the view that community-based alternatives are generally better equipped to provide ongoing support and address the underlying needs of children and young people.

⁴¹ Richards K & Renshaw L 2013. *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology, Research and Public Policy Series No. 125, 65.
http://www.aic.gov.au/media_library/publications/rpp/125/rpp125.pdf.

⁴² Fernandez E, Bolitho J, Hansen P, Hudson M & Kendall S 2014. *A Study of the Children's Court of New South Wales*, Part of a National Assessment of Australia's Children's Courts, UNSW, 38.
<http://www.childrencourt.justice.nsw.gov.au/Documents/chcourt%20assessment.pdf>.

⁴³ NSW Bureau of Crime Statistics and Research 2017. *New South Wales Custody Statistics, Quarterly Update September 2017*, 7.
http://www.bocsar.nsw.gov.au/Documents/custody/NSW_Custody_Statistics_Sept2017.pdf.

⁴⁴ Ibid.

⁴⁵ Fernandez E, Bolitho J, Hansen P, Hudson M & Kendall S, above n 42, at 66.

⁴⁶ Richards K & Renshaw L, above n 42, at 24.

⁴⁷ NSW Bureau of Crime Statistics and Research, above n 43, at 12.

⁴⁸ Richards K & Renshaw L, above n 42, at 1-2.

While the NSW Government offers a number of programs to help young people meet the conditions of their bail and remain in the community, such as the Bail Assistance Line,⁴⁹ gaps remain in the support system for the most vulnerable children and young people. The Australian Institute of Criminology's (AIC) 2017 national review of bail support highlighted a number of recurring issues with the provision of bail support for children and young people, including gaps in regional and remote services; a lack of engagement with children and young people with complex needs or substantial offending histories; and excessive monitoring and scrutiny of the young people accessing these services.⁵⁰

We note that the Maranguka Justice Reinvestment Project has implemented a number of 'circuit breakers' aimed at reducing the number of Aboriginal children and young people incarcerated for breach of bail conditions in Bourke. These include the development of a housing strategy in conjunction with Housing NSW; a memorandum of understanding with the Bourke Local Area Command regarding the use of warnings and cautions for children and young people who have breached their bail conditions; and a safe house for vulnerable children and young people provided by Youth Off the Streets.⁵¹

Even in areas where housing and other support services are available, children and young people may not be aware that such services exist. When we spoke to children and young people engaged with Specialist Homelessness Services about the type of information they most needed when they first became homeless, they called for access to information about their rights; the numbers they could call for help; details about any eligibility criteria for services; and information to help them confirm that services are safe and welcoming for children and young people. They also sought information about services or places where they could get a meal, talk to a support worker and charge their mobile phones or top up credit. Some were looking for information about particular forms of support, such as services for families, young people with disability, LGBTQIA+ young people or Aboriginal young people. Many talked about wanting information about the process of accessing homelessness support, from the initial stages of experiencing homelessness to eventually finding long-term accommodation.

When asked how and where this type of information should be provided, they called for a website that children, young people, schools and services can use and share. They also recommended posters at bus stops, train stations and tunnels, radio and television advertisements from the perspective of a young person, and social media campaigns across Facebook, Instagram and YouTube. We note that ACYP is currently developing OurLocal, a web portal to provide children and young people in NSW with tailored information about the facilities, activities and services in their local community.

Recommendations

- That the NSW Government develop an improved information strategy to ensure that children and young people know where to get help if they are at risk of homelessness.

⁴⁹ NSW Department of Justice. *Bail Assistance Line*.

http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/bail_assistance_line.aspx

⁵⁰ Australian Institute of Criminology 2017. *Bail support: A review of the literature*, Research Report no. 4, 32-33. http://www.aic.gov.au/media_library/publications/rr/004/rr004.pdf.

⁵¹ KPMG 2016. *Unlocking the Future: Maranguka Justice Reinvestment Project in Bourke Preliminary Assessment*, 35. <http://www.justreinvest.org.au/wp-content/uploads/2016/11/KPMG-Preliminary-Assessment-Maranguka-Justice-Reinvestment-Project.pdf>.

- That children and young people accessing assistance through Specialist Homelessness Services have an opportunity to remain at refuges longer than three months to allow them to achieve stability.
- That refuges are resourced to provide comprehensive support to young people with complex needs who may be in conflict with the law.
- That bail conditions as they relate to housing are implemented flexibly and in a manner that is consistent with the best interests of the child or young person, and that detention remains an option of last resort in addressing bail breaches.

Disability

People with mental and cognitive disability are over-represented in the criminal justice system, both as victims and alleged offenders.⁵² Accused persons with disability who are also Aboriginal are particularly vulnerable to being incarcerated, with a recent study by the AIC revealing that close to one in four Indigenous people in custody in Victoria had intellectual disability and nearly nine in ten had a lifetime mental disorder diagnosis.⁵³ Indigenous offenders with cognitive disability tend to come into conflict with the law at a significantly lower age than their peers, and have higher rates of reoffending.⁵⁴

The 2015 Young People in Custody Health Survey measured disability both through participants' self-reports and through professional assessments.⁵⁵ The majority of participants did not report any disability; the most commonly reported area in which assistance was needed was in learning and applying knowledge (8 per cent).⁵⁶ There were significant discrepancies between these self-reports and the assessments conducted to measure intellectual disability, language and literacy, which demonstrated high rates of disability and support needs among the young people in custody in NSW.⁵⁷

These results indicate that many young people are only assessed as having disability after they have entered detention, making it very unlikely that they have previously been afforded the opportunity to access the supports available through the National Disability Insurance Scheme (NDIS) and other sources.⁵⁸ This points to the need for much earlier screening of young people to determine if they have disability, and if so, to connect them with the appropriate supports to meet their full range of health, educational and other needs and minimise their risk of coming into conflict with the law.

We welcome the efforts of Juvenile Justice NSW to connect young people with disability to the NDIS, and support the further strengthening of its referral to long-term disability support services for young people receiving community-based interventions or transitioning out of detention.

⁵² Baldry, E. 2014. *Disability at the Margins: Limits of the Law*. Griffith Law Review, Vol. 23, No. 3, 370-388.

⁵³ Shepherd S, Ogloff J, Paradies Y & Pfeifer J 2017. *Aboriginal prisoners with cognitive impairment: Is this the highest risk group?* Australian Institute of Criminology Trends & issues in crime and criminal justice No. 536, 8. http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi536.pdf.

⁵⁴ Ibid; Baldry E, Dowse L & Clarence M 2012. *People with intellectual and other cognitive disability in the criminal justice system*. Sydney: UNSW.

⁵⁵ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 8, at 38-39.

⁵⁶ Ibid at 38.

⁵⁷ Ibid at 39.

⁵⁸ Ibid.

Recommendations

- That children and young people are screened for disability from early childhood and routinely thereafter in health, educational and justice settings, and are connected to the NDIS and other forms of support as appropriate.

Child Protection

Research shows that children and young people who have experienced abuse, neglect and involvement in the child protection system are at greater risk of coming into conflict with the law.⁵⁹ The Australian Institute of Health and Welfare (AIHW), for example, found that 10 per cent of the young people who were in out of home care between July 2014 and June 2016 were also under youth justice supervision—19 times the rate of the general population of the same age.⁶⁰ Of the young people in detention during that time, just over two in five (43 per cent) were also in the child protection system at some time in the same period—13 times the rate for the general population.⁶¹ Indigenous young people were 16 times as likely as non-Indigenous young people to have contact with both the child protection system and youth justice supervision.⁶²

While the AIHW's report did not draw on data from NSW,⁶³ similar trends have been documented in this state.⁶⁴ Overall, 68 per cent of participants in the 2015 Young People in Custody Health Survey reported experiencing at least one form of childhood abuse or neglect.⁶⁵ One in five reported that they had been placed in care before the age of 16 years.⁶⁶ Participants were 26 times more likely to have been placed in out of home care during their childhood than a child in the general Australian population, and female participants were 40 times more likely than other Australian females to have been placed in care.⁶⁷ Over a third of those in out of home care had been placed in care three or more times.⁶⁸

There are a variety of explanations for the overlap between the child protection and juvenile justice systems. One contributing factor is that carers may call the police to deal with problematic behaviour that parents might address on their own or with the help of family support services.⁶⁹ This

⁵⁹ Australian Institute of Health and Welfare 2017. *Young people in child protection and under youth justice supervision 2015-16*, Data Linkage Series No. 23. <https://www.aihw.gov.au/getmedia/06341e00-a08f-4a0b-9d33-d6c4cf1e3379/aihw-csi-025.pdf.aspx?inline=true>; Malvaso C, Delfabbro P & Day A. *The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending*, *Child Abuse & Neglect* 64 (2017) 32-46. <https://www.sciencedirect.com/science/article/pii/S0145213416302927>.

⁶⁰ Australian Institute of Health and Welfare, above n 60, at 14.

⁶¹ *Ibid* at 18.

⁶² *Ibid* at 15.

⁶³ *Ibid* at 3-4.

⁶⁴ McFarlane K 2015. *Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system*. <http://journals.sagepub.com/doi/abs/10.1177/0004865817723954>; Gough E 2011. *The Drift from Care to Crime: a Legal Aid NSW issues paper*. https://www.legalaid.nsw.gov.au/data/assets/pdf_file/0019/18118/The-Drift-from-Care-to-Crime-a-Legal-Aid-NSW-issues-paper.pdf.

⁶⁵ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 8, at 74.

⁶⁶ *Ibid* at 13.

⁶⁷ *Ibid*.

⁶⁸ *Ibid*.

⁶⁹ Gough E, above n 65, at 3.

issue has been particularly pronounced in residential out of home care services, where police have frequently been called to attend to children and young people who have engaged in property damage or assault.⁷⁰

In response, a Joint Protocol to reduce the contact of young people in residential out of home care with the criminal justice system (**Joint Protocol**) has been prepared by the NSW Ombudsman in consultation with stakeholders.⁷¹ The Joint Protocol was signed and endorsed in August 2016 and now informs policy and practice for NSW residential out of home care providers and police.⁷² ACYP will be conducting consultations in 2018 with children and young people living in residential care services as part of the Joint Protocol's implementation.

As the Joint Protocol recognises, in many cases, violent or challenging behaviour by children and young people may be a manifestation of the crimes committed against them and a reflection of their own victimisation and trauma.⁷³ It is important to ensure that young victims of crime are connected with appropriate supports to work through their experiences and minimise the potential for poor outcomes, including becoming involved in crime and the criminal justice system themselves. We note that there are a number of ongoing Government initiatives which aim to provide early intervention to children and young people in these circumstances, such as the Ministry of Health's Getting on Track in Time (Got It!) specialist mental health program for children aged 5 to 8 years with conduct problems and their families.

Given that violence has continued to emerge as a concern in our consultations across a variety of topics and locations, ACYP set out to conduct targeted consultations on the issue of violence in June and July 2017. When asked to describe what violence means, participants articulated that violence against children and young people is physical, emotional and sexual in nature. They highlighted that it can take place anywhere, and discussed violence in the home, at school, on public transport, in the workplace, in sports, at parties, in public places and online. They reported, "when we think of violence, we think that it's non-discriminative because it can happen to anyone so we can't just say it happens to particular people...no one's safe from it".

Following the focus groups, ACYP commissioned Galaxy Research to undertake an online poll of over 1,000 children and young people aged 12-24 across the state, asking them similar questions. The results of the poll were consistent with the findings from the focus groups—the respondents identified many different types of abuse as forms of violence against children and young people and reported that it takes place in a variety of settings.

ACYP also commissioned Galaxy Research to run a similar online poll of over 1,000 people aged 18 years and older to gauge the general population's attitudes towards violence against children and young people. The results of this poll established that while children, young people and adults define violence in similar ways, adults are more likely to think that violence against children and young people occurs in particular communities rather than universally. They also underestimate the prevalence of violence against children and young people (with over half of respondents estimating that there are 2,000 children or fewer in the state who are victims of violence) and have doubts

⁷⁰ McFarlane K, above n 65, at 90.

⁷¹ *Joint Protocol to reduce the contact of young people in residential out of home care with the criminal justice system*, August 2016. <http://www.community.nsw.gov.au/?a=408679>.

⁷² Family & Community Services, *Joint Protocol to reduce the contact of young people in residential out of home care with the criminal justice system*, Factsheet, February 2017. http://www.community.nsw.gov.au/_data/assets/file/0010/408691/Factsheet_JP.pdf.

⁷³ *Ibid* at 5.

about the truthfulness of reports (with about half of respondents reporting that they believe up to a quarter of children's reports of abuse are untrue).

The results of this poll confirm the need for a cultural shift in the way we think about and respond to violence against children and young people. We must acknowledge that violence is being perpetrated against children and young people; that this violence has serious negative impacts on their lives; and that they are entitled to protection, support and a say in how to address it.

The children and young people we heard from offered many recommendations to address violence, including the introduction of free courses to help parents develop non-violent ways of managing anger and mandatory check-ups for parents with a history of substance abuse or violence. They also offered practical suggestions for assisting children and young people in need. These included the provision of safe houses; safety alert systems for those in emergency situations; education for students about what constitutes violence, the rights of children and young people experiencing violence, and the supports that are available; and an anonymous helpline specifically for children and young people experiencing violence.

They also recommended the development of a campaign to raise awareness about violence against children and young people. In response, ACYP has created the 'now and forever' campaign, which has launched its first video using true to life examples of different forms of violence from the perspectives of children and young people.⁷⁴ The campaign calls on adults to acknowledge that violence against children and young people is a problem and to pledge to be part of the solution. While the campaign is for all children and young people in NSW, we hope that raising awareness of the issue will help improve outcomes for particularly vulnerable cohorts such as those in the criminal justice or child protection systems.

In all of our consultations, children and young people said that they wanted to be treated with respect and listened to. In many instances, they discussed feeling confused about what was happening when the Police or the Department of Family and Community Services became involved in their situation, and talked about wanting more information as well as a dedicated person they could talk to throughout the process for clarification, support and advocacy. They also called for children and young people to be engaged in the development of an action plan to address violence against them, rather than having interventions imposed upon their families without their views being taken into account. We therefore recommend the introduction of a child-centred advocacy role to provide specialist support to children and young people navigating difficult circumstances.

We note that the NSW Ombudsman recently conducted a review of the Joint Investigation Response Team (**JIRT**), a tri-agency program delivered by the Department of Family and Community Services, the NSW Police Force and the Ministry of Health, which provides a coordinated safety, criminal justice and health response to children and young people alleged to have suffered sexual abuse, serious physical abuse or extreme neglect.⁷⁵ One of the recommendations arising from the review is to trial the establishment of a Child and Family Advocate role within the JIRT program, which would provide immediate support to children and their families during the criminal interview and criminal justice processes; act as a contact point for the child and their family to receive information about the JIRT process and the status of their case; and enable stronger follow up and coordination of

⁷⁴ <https://www.nowandforever.nsw.gov.au/>.

⁷⁵ NSW Ombudsman 2017. *Annual Report 2016-17*, 106.

https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0007/49498/NSW-Ombudsman-Annual-Report-2016-17.pdf.

services to provide ongoing, child- and family-focussed support and to facilitate referral to services.⁷⁶ ACYP supports this recommendation and is of the view that there would be value in extending this type of role beyond JIRT to support all children and young people who are involved in the child protection system to access information and services tailored to their needs.

Recommendations

- That a child-centred advocacy role is trialled to provide specialist support to children and young people who are involved in the child protection system.
- That child rights training is made available to guide services in promoting children's and young people's best interests and right to be heard.
- That age-appropriate information about where to seek help with violence is developed and distributed to children and young people in primary and secondary schools and youth services.
- That the NSW Government explore the option of safe houses for children and young people experiencing violence.

Mental Health

In 2016, ACYP asked a representative sample of children and young people aged 12-24 years to rate their mental health. While the majority of children and young people (79 per cent) rated their mental health as excellent, very good or good, one in five (22 per cent) rated their mental health as fair or poor. Young women were more likely to rate their mental health as fair (21 per cent compared to 9 per cent) and those with disability were more likely to rate their mental health as fair or poor (48 per cent compared to 19 per cent).

Mental health issues are more predominant among young people involved in the criminal justice system. Of the 192 young people who completed the Kiddie Schedule for Affective Disorders and Schizophrenia interview as part of the 2015 Young People in Custody Health Survey, 83 per cent met the threshold for at least one psychological disorder, and 63 per cent met the threshold for two or more.⁷⁷ The most common psychological disorders for participants were attention and behaviour disorders, followed by substance use disorders.⁷⁸

Significant Government resources have been allocated to youth mental health in recent years. The Department of Education has added an additional 236 counsellor and psychologist positions and delivered flexible funding for wellbeing services through the Supported Students Successful Students initiative. The Ministry of Health is targeting health services to better treat and protect young people from intentional self harm and psychosocial disorders, and provides Youth Mental Health First Aid training for frontline community-based youth workers, among other projects.

Government agencies and mental health organisations have been effective in getting important messages to children and young people. This has led to children and young people speaking about

⁷⁶ Ibid at 108.

⁷⁷ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 8, at 65.

⁷⁸ Ibid.

mental health in consultation with ACYP candidly and often without the shame and stigma that is often associated with talking about mental ill-health amongst adult population groups.

While it is important to celebrate the significant work of the mental health sector in breaking down stigma, barriers to support and service system gaps remain for children and young people. These barriers and gaps are often raised in our consultations, and include the cost of travel, availability of transport and the lack of services available outside of business hours. This is especially the case for children and young people living in regional and remote areas.

In our homelessness consultations, participants discussed their experiences of depression, anxiety, and trauma. They reported that too many young people with complex drug and alcohol and mental health needs are in homelessness refuges when they should be in rehabilitation services. Some expressed a strong desire to address their substance use, but reported significant barriers to accessing detox and rehabilitation facilities in NSW. They felt that facilities were designed to support adult populations, were unaware of the specific needs of children and young people and had long waiting lists. One young person who was able to access a detox facility told us that after leaving detox, he was refused help by several youth accommodation services due to his “high needs”.

Some children and young people reported that Headspace was working well for them, and it was considered to be particularly beneficial for those who do not feel comfortable accessing a mainstream doctor. In some regions however, there are wait lists, which is problematic for children and young people who need more immediate treatment. In certain cases, particularly in crisis refuges, children and young people may not be engaged with a service long enough to wait for an appointment.

Studies have shown that mental health and substance abuse issues—particularly when they co-occur—are linked with offending and re-offending.⁷⁹ While we welcome the Government’s commitment to fund Rural Rehabilitation Services for young people in Dubbo and Coffs Harbour, we join Judge Johnstone in his call for the expansion of youth-specific drug and alcohol services and the delivery of mental health and trauma counselling to divert young people from long-term involvement with the criminal justice system.⁸⁰ We also support the recommendations of the Mental Health Commission of NSW in its 2017 Directions for Action Towards a Just System, particularly the call for earlier assessment and connection to case management supports and services.⁸¹ We recommend that service hours are adjusted to ensure that children and young people can access assistance outside of business hours; that services are provided in high needs areas and accessible locations; and that transport support is provided so that they have a safe and lawful means of travelling to and from appointments.

Recommendations

- That the Government further invest in mental health and substance abuse facilities and programs specifically for children and young people, especially those in regional areas.

⁷⁹ Smith N & Trimboli L 2010. *Comorbid substance and non-substance mental health disorders and re-offending among NSW prisoners*, Crime and Justice Bulletin No. 140, 2-3.

<http://www.bocsar.nsw.gov.au/Documents/CJB/cjb140.pdf>.

⁸⁰ Johnstone P, above n 16, at 29.

⁸¹ Mental Health Commission of NSW 2017. *Towards a just system Mental illness and cognitive impairment in the criminal justice system, Directions for Action*.

https://nswmentalhealthcommission.com.au/sites/default/files/documents/justice_paper_final_web.pdf.

- That services targeting children and young people review their accessibility, with a view to ensuring that offices are appropriately located, open at times when young people are able to attend, and that young people are supported to travel to and from appointments.
- That refuges are resourced to provide comprehensive and specialist assistance to children and young people with complex mental health and substances abuse issues.
- That emergency mental health services are made available to see children and young people urgently where they are at high risk of disengaging before the waiting period ends.

Policing

In many of our consultations, the Police are mentioned as something that is working well for children and young people. They speak especially highly of Police and Citizens Youth Clubs (PCYC) and the sports and fitness opportunities that PCYC provides, such as the annual Nations of Origin rugby and netball tournament.

While many children and young people have positive impressions of the Police, some children and young people we have heard from have also raised concerns. Some participants have expressed the feeling that the Police were more likely to stop them on the street due to their race, and several reported incidents where they felt that Police had used more force than was necessary during arrest. A small cohort of the young people we heard from in Juvenile Justice Centres told us that they felt “constantly watched” by Police in the community.

We note that the practice of monitoring those who have come into conflict with the law is part of the Suspect Target Management Plan (STMP), a framework implemented by the Police to prevent recidivist offenders from committing crimes. In October 2017, the Youth Justice Coalition released a report on how the STMP is used in relation to children and young people.⁸² The report found that the STMP disproportionately targets young people, particularly those who are Aboriginal.⁸³ It also found that these young people experienced a pattern of repeated contact with the police, which increased their risk of being charged with offences.⁸⁴

We join the report authors in their recommendation that the Police to discontinue applying the STMP to children and young people under 18 years, as it has the potential to compromise the positive Police-youth relations that are being built through initiatives such as the Youth Strategy and PCYCs, and to disrupt the other programs aimed at diverting and rehabilitating young offenders, such as therapeutic services provided through the Youth Koori Court.⁸⁵

The case studies in the report also indicate that young people on the STMP may have at times been unnecessarily issued with move on directions.⁸⁶ Under the *Law Enforcement (Powers and Responsibilities) Act 2002*, Police are authorised to give a direction to a person in a public place whose behaviour or presence is obstructing people or traffic; harassing or intimidating others;

⁸² Sentas V & Pandolfini C 2017. *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*. A Report of the Youth Justice Coalition. <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>.

⁸³ Ibid at 1.

⁸⁴ Ibid.

⁸⁵ Ibid at 1-2.

⁸⁶ Ibid at 18.

causing (or likely to cause) fear to persons of reasonable firmness; indicating that they are there to engage in a drug deal; or acting in a way that is disorderly or likely to cause injury or risk as a result of intoxication.⁸⁷

In a review of this power, the NSW Ombudsman found that children, young people and Aboriginal and Torres Strait Islander people were given move on directions at a disproportionately high rate, and that directions were given in a wider range of circumstances than authorised by law.⁸⁸ As a result, the Ombudsman recommended the introduction of a code of practice for issuing directions.⁸⁹ In 2016, the *Law Enforcement (Powers and Responsibilities) Regulation* was amended to include such a code of practice in Schedule 3.

ACYP has misgivings about the power to give directions due to unintended consequences on the ability of children and young people use and enjoy public space, and the potential for confrontation to result in public conduct offences and fines. While we welcome the introduction of a code to guide Police in the difficult task of promoting safe and equitable enjoyment of public spaces, ACYP is of the view that Schedule 3 of the Regulation could be strengthened by providing further guidance on the issues identified in the Ombudsman's report, and by ensuring that it reflects the diversionary principles underlying related juvenile justice legislation.

Recommendations

- That the STMP program is no longer applied to children and young people under the age of 18 years.
- That the code of practice for move on directions is reviewed to ensure that it reflects the rights of children and young people to use public space and the diversionary principles underlying the juvenile justice system.

The Young Offenders Act and the Children (Criminal Proceedings) Act

ACYP strongly supports the use of diversionary options available through the *Young Offenders Act 1997*. Research by the NSW Bureau of Crime Statistics and Research (**BOCSAR**) shows that most young people who receive a caution (58 per cent) and many who complete a conference (42 per cent) do not reoffend within five years.⁹⁰ BOCSAR research has also demonstrated that both young offenders (94 per cent) and victims (86 per cent) are usually satisfied with outcome plans made at conferences, and feel that they are fair (98 per cent of young offenders and 91 per cent of victims).⁹¹

⁸⁷ *Law Enforcement (Powers and Responsibilities) Act 2002* s 197.

⁸⁸ NSW Ombudsman 1998. *Policing Public Safety – Report Under s 6 Crimes Legislation Amendment (Police and Public Safety) Act 1998*, 37-38, 50, 228.

⁸⁹ *Ibid* at 279.

⁹⁰ Vignaendra S & Fitzgerald J 2006. *Reoffending among young people cautioned by police or who participated in a youth justice conference*, Contemporary Issues in Crime and Justice No. 103.
<http://www.bocsar.nsw.gov.au/Documents/CJB/cjb103.pdf>.

⁹¹ Wagland P, Blanch B & Moore E 2013. *Participant satisfaction with Youth Justice Conferencing*. Sydney: NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin no. 170, 8-9.
<http://www.bocsar.nsw.gov.au/Documents/CJB/cjb170.pdf>.

We note that some offences are not eligible for diversion under the *Young Offenders Act 1997*.⁹² ACYP is of the view that there may be some circumstances in which it would be more appropriate to issue a warning, caution or conference rather than to charge a child or young person with these offences. We therefore suggest that the ineligible offences should be reconsidered with a view to providing the Police with greater discretion to divert young people away from the criminal justice system.

A principle of the *Young Offenders Act 1997* is that the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system should be addressed by the use of warnings, cautions and conferences.⁹³ We are very pleased that the Government has made this an ongoing priority by committing in the Plan to reduce the percentage of Aboriginal young people in custody. Looking at BOCSAR data from 2013, it is important to examine why non-Indigenous young people may receive diversionary options under the *Young Offenders Act 1997* at a higher rate than Indigenous young people.⁹⁴ We encourage the Police and the Department of Justice to research the contributing factors and consider what actions may be needed to ensure that Aboriginal children and young people have equal access to diversion.

It is also important to examine why Indigenous children and young people tend to come into conflict with the law, and end up under the supervision of Juvenile Justice NSW, at a younger average age than non-Indigenous children and young people. According to AIHW data, on an average day in 2015-16, all three of the 11 year olds; half of the 12 year olds; and 59 per cent of the 13 year olds under supervision in NSW were Indigenous, as were six of the nine young people under the age of 14 years who were in detention.⁹⁵

Under the *Children (Criminal Proceedings) Act 1987*, the minimum age of criminal responsibility is 10 years.⁹⁶ Between the ages of 10 and 14 years, children and young people are presumed to be incapable of forming criminal intent, though this presumption can be overcome if evidence is presented establishing that they knew their actions were seriously wrong and not merely naughty.⁹⁷ Despite research demonstrating that the adolescent brain undergoes significant growth and development during—and well past—this age range,⁹⁸ it seems that some Indigenous children and young people under the age of 14 years continue to fall into the criminal justice system.

The United Nations Committee on the Rights of the Child and the Special Rapporteur on the Rights of Indigenous Peoples have expressed concern regarding the over-representation of Aboriginal children and young people in the criminal justice system, and have recommended an increase in the minimum age of criminal responsibility.⁹⁹ We join the international human rights community as well

⁹² *Young Offenders Act 1997* s 8; *Crimes Act 1900* ss 61N, 66C; *Crimes (Domestic and Personal Violence) Act 2007* s 13.

⁹³ *Young Offenders Act 1997* s 7(h).

⁹⁴ Ringland C and Smith N 2013. *Police use of court alternatives for young persons in NSW*. Sydney: NSW Bureau of Crime Statistics and Research Contemporary Issues in Crime and Justice no. 167, 10. <http://www.bocsar.nsw.gov.au/Documents/CJB/cjb167.pdf>.

⁹⁵ Australian Institute of Health and Welfare 2017. *Juvenile Justice National Minimum Dataset 2015-2016*, Supplementary Tables S128a-c. <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2015-16/data>.

⁹⁶ *Children (Criminal Proceedings) Act 1987* s 5.

⁹⁷ Urbas G 2000. *The Age of Criminal Responsibility*. Australian Institute of Criminology Trends & issues in crime and criminal justice no. 181, 1, 4. http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi181.pdf.

⁹⁸ Johnstone P, above n 16, at 12-18.

⁹⁹ Committee on the Rights of the Child, *Concluding Observations—Australia*, 40th sess, UN Doc CRC/C/15/Add.268 (20 October 2005) [73]; Committee on the Rights of the Child, *Concluding Observations—*

as the national Change the Record Coalition in their call to raise the minimum age of criminal responsibility in the *Children (Criminal Proceedings) Act 1987*.¹⁰⁰ ACYP believes that children and young people under the age of 14 years can be better served by referral to multi-systemic therapy programs, such as Youth on Track, which offer intensive family- and community-based interventions to address underlying causes of offending, such as school disengagement, substance abuse, and family violence.

Recommendations

- That a review is conducted of the offences that are ineligible for diversion with a view to increasing the discretion of the Police to divert children and young people in appropriate circumstances.
- That the minimum age of criminal responsibility is raised from 10 to 14, and that children and young people under the age of 14 who come into conflict with the law are connected with support services to address their underlying needs.
- That further work is done to examine the factors contributing to the early contact and non-diversion of Aboriginal children and young people in the criminal justice system.

Courts

The Children's Court of NSW is one of the oldest children's courts in the world, with its specialist jurisdiction originating in 1850.¹⁰¹ Over time, the philosophy underpinning the Children's Court has shifted from a 'child-saving' ideology to one focussed on the rights of children,¹⁰² and its approach has become imbued with the practices of therapeutic jurisprudence and restorative justice.¹⁰³

Children's Magistrates are selected for their expertise in managing complex cases and understanding the particular vulnerabilities and needs of children and young people.¹⁰⁴ A 2014 review of the Children's Court found that its strength lies in this specialist knowledge, as well as appropriate sentencing and the ability to connect children and young people with holistic services.¹⁰⁵ The review also found a number of challenges facing the Children's Court, which are "interconnected and relate to the complexity of problems faced by the children, young people and parents who appear in the Children's Court".¹⁰⁶

Currently, Children's Court Magistrates hear approximately 90 per cent of care cases, but only about 60 per cent of children's and young people's criminal matters, with the balance of cases heard by Local Court Magistrates exercising Children's Court jurisdiction, predominantly in regional and

Australia, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012) [84]; *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, 36th sess, UN Doc A/HRC/36/46/Add.2 (8 August 2017) [112].

¹⁰⁰ Change the Record Coalition, *Free to be Kids: National Plan of Action*, November 2017.

¹⁰¹ Johnstone P, above n 16, at 3.

¹⁰² Fernandez E, Bolitho J, Hansen P, Hudson M & Kendall S, above n 42, at 8.

¹⁰³ Johnstone P, above n 16, at 6.

¹⁰⁴ Fernandez E, Bolitho J, Hansen P, Hudson M & Kendall S, above n 42, at 8, 19.

¹⁰⁵ *Ibid* at 20.

¹⁰⁶ *Ibid* at 39.

remote areas.¹⁰⁷ Many of these areas also lack other specialist services for children and young people, including legal support, accommodation and mental health services.¹⁰⁸ As a result, children and young people living outside of urban areas are less likely to receive the services they need to address the underlying causes of their offending and stay out of the criminal justice system.¹⁰⁹

We support Judge Johnstone's recommendation to expand the coverage of the specialist Children's Magistrates across the state,¹¹⁰ and we recommend improved access to other vital support services for children and young people in regional and remote areas. ACYP also supports Judge Johnstone's call for greater utilisation of section 32 of the *Children (Criminal Proceedings) Act* as a deferred sentencing model, allowing a young person time to seek help with issues such as mental health or substance abuse before returning to the court for sentencing.¹¹¹

We note that a number of participants in the 2014 review of the Children's Court considered that the separation of the care and crime jurisdictions is, to an extent, superficial, given that so many children and young people are involved in both.¹¹² These participants suggested that children and young people in these circumstances may be better served by the partial reintegration of the two jurisdictions, so that the court may take a more coordinated case-management approach to children and young people at risk of long-term involvement in the criminal justice system.¹¹³ ACYP suggests further consideration of this proposal.

We once again highlight the over-representation of Aboriginal children and young people coming before the court, and support culturally appropriate initiatives such as the Youth Koori Court trial in Parramatta. The Youth Koori Court offers an alternative process for managing cases involving Aboriginal young people charged with offences before the Children's Court.¹¹⁴ If a case is assessed as suitable, the Youth Koori Court conducts a conference with the young person, his or her legal representative, family members or supporters, representatives from relevant Government and non-Government support agencies and an Elder or Respected Person.¹¹⁵ The purpose of the conference is to have an open discussion about the risk factors that may be impacting on the young person's involvement in crime and to encourage the young person to agree on taking action, with appropriate support, to address these risk factors through the development of an Action and Support Plan.¹¹⁶

The trial is reportedly going well, with many young people developing a strong sense of accountability for their actions and five participants obtaining permanent housing through the scheme.¹¹⁷ ACYP supports Judge Johnstone's call for funding of the Youth Koori Court, to allow it to expand to other communities and provide targeted and supported diversion of Aboriginal children and young people from the criminal justice system.¹¹⁸

¹⁰⁷ Johnstone P, above n 16, at 7.

¹⁰⁸ Fernandez E, Bolitho J, Hansen P, Hudson M & Kendall S, above n 42, at 21.

¹⁰⁹ Ibid at 22.

¹¹⁰ Johnstone P, above n 16, at 7.

¹¹¹ Ibid at 29.

¹¹² Fernandez E, Bolitho J, Hansen P, Hudson M & Kendall S, above n 42, at 26.

¹¹³ Ibid.

¹¹⁴ Children's Court of New South Wales 2015. *Practice Note No. 11, Youth Koori Court*, 1.

<http://www.childrenscourt.justice.nsw.gov.au/Documents/amended%20ykc%20practice%20note%2011.pdf>.

¹¹⁵ Ibid at 4-5.

¹¹⁶ Ibid.

¹¹⁷ Johnstone P, above n 16, at 26.

¹¹⁸ Ibid at 27.

Recommendations

- That the coverage of specialist Children’s Courts in the criminal jurisdiction is expanded.
- That access to specialist support services for children and young people in rural, regional and remote areas is improved.
- That consideration is given to the partial reintegration or co-case management of the Children’s Court’s care and crime jurisdictions.
- That the Youth Koori Court is fully funded and expanded across the state.
- That there is greater flexibility and use of deferred sentencing for children and young people to allow them an opportunity to connect with support services in the community.

Detention Centres

ACYP acknowledges and supports Juvenile Justice NSW’s recent efforts to enhance staff training and improve transitional support within detention centres. We also welcome the Government’s pledge to address the issue of overrepresentation, and commend the significant reduction in the overall number of children and young people in detention since 2011.¹¹⁹

We acknowledge that many of the remaining young people in custody are highly vulnerable, with histories of victimisation and social disadvantage, creating complex needs.¹²⁰ As highlighted in the 2015 Young People in Custody Health Survey, these children and young people can be re-traumatised by their experiences in custody if they are not managed in a trauma-informed manner.¹²¹ We therefore welcome Juvenile Justice NSW’s behaviour management review and hope that it will guide workers in implementing trauma-informed practices.

In our juvenile justice consultations, we primarily heard from children and young people about their lives on the outside. However, they also discussed the situation within Juvenile Justice Centres. Generally, they spoke very highly of the schools in custody and of the programs offered, particularly programs related to Aboriginal culture. Most of the negativity associated with custody revolved around the perceived differences between the individual Juvenile Justice Centres, including the rules that were applied, the way staff interacted with young people, and the breadth of programs that were provided.

We support the ongoing work of Juvenile Justice to improve consistency across the Juvenile Justice Centres, and believe that this can mitigate the risk that children and young people will misbehave or reoffend to get to a ‘better’ centre. We also welcome the introduction of new caseworkers and feel that more targeted transition support in the lead up to a young person’s release from custody will help ease anxiety and promote resilience against reoffending. Given that many young people in detention told us that they would like to be connected to sports and fitness activities upon their

¹¹⁹ Juvenile Justice NSW 2017. *2015-16 Annual Report*, 25.

<http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/publications/2015-16%20Year%20in%20Review.pdf>.

¹²⁰ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 8, at 1.

¹²¹ *Ibid* at 65.

return to the community, we suggest that transition planning could include claiming the Active Kids Rebate,¹²² alongside planning for other ongoing support needs.

We suggest the introduction of exit interviews for children and young people leaving detention to determine if they are receiving the support they need to stay out of the criminal justice system. As suggested for workers within the child protection sector, we also suggest that frontline juvenile justice workers may benefit from child rights training which emphasises the psychosocial needs of vulnerable children and young people. Given the diverse cultural and linguistic backgrounds of the children and young people in detention, we believe it would be helpful for such training to include a component on cross-cultural awareness and response-based practice.

Recommendations

- That child rights training is made available to guide frontline staff who work with children and young people of diverse backgrounds and complex needs to promote their best interests and right to be heard.
- That Juvenile Justice NSW continue to enhance its transition planning for children and young people exiting Juvenile Justice Centres.
- That exit interviews are introduced to examine the ongoing support needs of children and young people leaving Juvenile Justice Centres.

Aboriginal Children and Young People

In 2015-16, Indigenous young people in NSW were about 17 times as likely as non-Indigenous young people to be under Juvenile Justice supervision, and 24 times as likely to be in detention.¹²³ We welcome the Government's commitment in the Plan to reduce this unacceptable level of overrepresentation.

In addition to the suggestions raised above, a number of issues have arisen in our consultations which may inform policy responses to this issue. First, it is clear that Aboriginal children and young people continue to experience racism in their daily lives. In our 2016 consultations with over 200 Aboriginal young people, racism and discrimination were raised by 45 per cent of participants in response to the question "what is not working well in your community?" and by 60 per cent of participants in response to the question "what makes you feel unwelcome in your community?". Some reported that peer groups at school are defined by race. Others spoke about shopkeepers and others holding stereotypes that Aboriginal young people are criminals.

Similarly, the 2015 Young People in Custody Health Survey found that 61 per cent of Aboriginal young people in custody had experienced some form of racism in the previous 12 months, most commonly hearing others talk about Aboriginal people in a racist way, followed by being the target of name-calling, verbal abuse or gestures.¹²⁴ This type of behaviour can escalate situations and cause

¹²² NSW Government 2017. *How to claim the Active Kids Rebate*. <https://www.nsw.gov.au/news-and-events/news/how-to-claim-the-active-kids-rebate/>.

¹²³ Australian Institute of Health and Welfare 2017. *New South Wales: Youth justice supervision in 2015-16*, Youth justice fact sheet no 76, 2-3. <https://www.aihw.gov.au/getmedia/4446f4d0-2eb6-4fa2-9c84-17e70bc710ce/YJA-2015-16-NSW.pdf.aspx>.

¹²⁴ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, above n 8, at 24.

young people to react in a way that brings them into conflict with the law. We recommend the development of additional programs to help address racism in the community, as well as training for workers to ensure that their practices take into account how racism impacts Aboriginal young people.

Second, the Aboriginal children and young people we have heard from have emphasised that connection to culture is something that makes them feel happy and welcome, with NAIDOC week and Nations of Origin both mentioned as avenues supporting them to connect with community and culture. Those in Juvenile Justice Centres consistently spoke highly of cultural programs through which they learned dance, music and language, and stressed that they would like more opportunities to connect with community and culture on the outside. We therefore suggest that Juvenile Justice NSW further strengthen its referral to cultural programs, such as Aboriginal Language and Culture Nests and Opportunity Hubs, for young people receiving interventions or transitioning out of detention.

Aboriginal people are best placed to determine the types of approaches that will work for them, and we join Aboriginal Affairs and others in their call to ensure that local Aboriginal communities are empowered to design, develop and deliver diversionary interventions that meet the needs of their communities. Our consultations with children and young people confirm that, wherever possible, services targeted to Aboriginal children and young people should be delivered through Aboriginal owned and controlled organisations. We suggest that consideration is given to the introduction of an Aboriginal owned and controlled detention centre.

We will be conducting another round of consultations with Aboriginal children and young people across NSW in the coming months, and we would be pleased to advise the Committee of any relevant feedback.

Recommendations

- That, where possible, services targeted to Aboriginal children and young people are delivered through Aboriginal owned and controlled organisations.
- That investigation is made into the introduction of an Aboriginal owned and controlled detention centre.
- That additional programs and policies are developed to acknowledge and address the racism and discrimination experienced by Aboriginal children and young people.
- That referral pathways are improved to connect Aboriginal children and young people in conflict with the law with community-based cultural programs.

Conclusion

ACYP thanks the Legislative Assembly Committee on Law and Safety for considering these important issues and welcomes any follow up questions from its members.